

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: NOV 21 2014

OFFICE: CALIFORNIA SERVICE CENTER

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition on March 19, 1997. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition stating the reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on March 6, 2014. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The self-petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a director of music and youth ministries director at [REDACTED] Arizona. In revoking the petition, the director found that the petitioner failed to establish that he had the requisite two years of qualifying work experience immediately preceding the filing of the petition.

The petitioner submits a brief on appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States –

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At the time the petition was approved in 1997, the regulation at 8 C.F.R. § 204.5(m)(1) provided that, to be approved as a special immigrant religious worker, an alien must be coming to the United

States to work for a bona fide nonprofit religious organization as a minister or in a professional capacity in a religious vocation or occupation. The regulation further stated:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, was filed on November 21, 1996. In a letter supporting the petition, the senior pastor of the petitioner's prospective employer stated that the petitioner had been an active member of [REDACTED] Sonora, Mexico for 13 years, and had served as its director of music "as shown by letter." The petitioner submitted an untranslated letter from [REDACTED]. The regulation at 8 C.F.R. § 103.2(b)(3) provides that "[a]ny document containing foreign language submitted to USCIS [U.S. Citizenship and Immigration Services] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

The director approved the petition on March 19, 1997. On February 6, 1998, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on the approved petition. Accompanying the application, the petitioner submitted a Form G-325A, Biographic Information, on which he was instructed to list his employment for the last five years. The petitioner indicated that he had worked as a "Computer Tec" for [REDACTED] from February 1993 to 1997. He did not list any other employment during the two years preceding the filing of the instant Form I-360 petition. The Form I-485 application was denied on September 10, 1999. On March 12, 2009, the petitioner filed a second Form I-485 application, which was denied on March 17, 2009.¹

On November 20, 2013, the director issued a NOIR stating that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying experience immediately preceding the filing of the petition. The director stated that the submitted letter from [REDACTED] "appears to indicate that the [petitioner] had served as their Director of Music from 1993 to 1996," but that the letter did not indicate whether the work was full time or compensated, and the petitioner failed to submit a certified translation for the letter. Further, the director noted that the petitioner's G-325A, discussed above, indicated that he was employed in a secular position during the qualifying period. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such

¹ The petitioner indicated on the Form G-325A that he signed on May 9, 2008 that he had worked for [REDACTED], AZ since 1997. On his federal tax returns for 2005, 2006 and 2007, the petitioner indicated that he was a self-employed truck driver. The petitioner submitted Internal Revenue Service Forms 1099-MISC, Miscellaneous Income, for the same years, none of which were issued by the prospective employer identified on the Form I-360. Thus, it is unclear if the petitioner has ever worked as a religious worker, even after approval of his Form I-360 petition.

inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to the NOIR, the petitioner submitted a December 16, 2013 letter from Pastor [REDACTED], stating that during the time he was pastor at [REDACTED] the petitioner was a member of the church for 10 years and served as its director of music from "1993 to April 1996." In a separate letter, the petitioner described his duties in that position.

On March 6, 2014, the director revoked the petition, finding that the petitioner failed to overcome the grounds for revocation cited in the NOIR. On appeal, the petitioner contends that it is improper for the director to now find fault with evidence that was found to be sufficient when it was submitted in 1996. The petitioner contends that he has established his qualifying experience according to the requirements of the regulations in effect when the petition was approved.

Regarding USCIS' authority to revoke approval of the instant petition, Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

As discussed above, the petitioner has submitted two letters regarding his purported qualifying experience for [REDACTED] the first in support of the petition and the second in response to the NOIR. In addition, the petitioner submitted his own description of his purported duties. However, the petitioner has not submitted any documentary evidence to support the assertions made in the letters or in his description. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190

(Reg'l Comm'r 1972)). The petitioner submitted insufficient documentation to establish that he was engaged in any religious work during the qualifying period. Accordingly, we find that the petitioner failed to establish that he has the requisite two years of qualifying experience under 8 C.F.R. § 204.5(m)(1)(1997).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.